IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.7812 OF 2005
IN
CRIMINAL APPEAL NO.123 OF 2005

Upendra Tarachand Shah ...Applicant
vs.
The State of Maharashtra and ors. ...Respondents

Mr.Shriram Shirsat with Mr.S.R.Wartak for the Applicant
Mr.D.P.Adsule,A.P.P. for State

CORAM: A.S.OKA,J.
DATE : DECEMBER 13,2006.

P.C.:

1. On the last date the submissions of the Advocates for the parties were heard. The learned Advocate for the Applicant stated that all the Respondents are served with the notice.

2. This is an application made for return of property on the basis of the Judgment and Order dated 1st, 2nd, 3rd, 4th and 5th February 2005 passed by the learned Additional Sessions Judge, Mumbai in Sessions Case No.218 of 2001. In the operative part of the Judgment, the learned Trial Judge has given following directions :

. "The property namely cash and jewellery is ordered to be returned to Upendra Tarachand Shah (P.W.No.1) on a proper identification by Praful Chandrakant Bhosale (P.W.No.43) after the appeal period or subject to Appellate Court's order."

3. Criminal Appeal No.123 of 2005 has been filed by the accused No.8 for challenging the conviction and sentence.

Criminal Appeal No.456 of 2005 has been filed by the accused No.7 for challenging the conviction and sentence. Both the Appeals have been admitted. This Application was made in view of the observation of the Trial Court that the Applicant is entitled to return the property subject to Appellate Court's order.

4. The learned Advocate for the Applicant submitted that none of the accused persons have challenged the direction given by the learned trial Judge as regards return of property. He submitted that no Appeal has been preferred by any person under section 454 of the Code of Criminal Procedure, 1973. He invited my attention to the reply filed by some of the Respondents viz. Respondent Nos.2,3,4 and 8 in which they have clearly stated that the property may be handed over to the Applicant in terms of the order passed by the trial Court. I have heard the submissions of the learned A.P.P.

5. My attention has been invited to the order dated 9th December 2005 passed by this Court. As prayer was for return of cash amount of more than 10,00,000/-, this court issued notice to the Income Tax Department to ascertain whether the amount has been accounted for. On 17th July 2006, the Advocate for Income Tax Department placed on record a report of the concerned Income Tax Officer. The order passed on that day shows that this Court was satisfied after perusal of the report and therefore notice was issued to the Respondents.

6. The property consists of cash and jewellery. The cash is of Rs.11,36,650/- and the jewellery is also valuable. The details of Articles are mentioned in the chart annexed at Exhibit 'A'. As substantive Appeals against the order are pending, even if the Applicant is to be permitted to take the property, suitable conditions will have to be imposed. My attention has been invited to the decision of the Apex Court in case of Sunderbhai Ambalal Desai Vs. State of Gujrat [(2002) 10 S.C.C. page 283] and further directions issued by the Apex Court in the same case [(2002) 10 S.C.C. page 290]. The Apex court in the said decision has laid down the procedure for disposal of the muddemal property. The Apex Court has however dealt with the power of the Court under section 451 of the Code of Criminal Procedure, 1973. None of the Respondents have claimed the property. No Appeal has been preferred under section 454 of the said Code for challenging the directions regarding return of property. Therefore, there is no impediment in acting upon the direction. However, in view of the directions given by the Apex Court, suitable conditions will have to be imposed while permitting the Applicant to take the property. The Applicant will have to furnish security to the satisfaction of the Trial court for the cash amount. So far as the jewellery is concerned, the Applicant will have to furnish usual bond to maintain the jewellery in proper condition and to produce the same before the court if ordered at the time of hearing of the Appeal.

Before the jewellery is handed over to the Applicant, the same will be properly photographed at the cost of the Applicant in presence of the Officer of the trial Court and the photographs shall be signed by the concerned Officer of the Trial Court as well as the Applicant and the same will be kept on record of the Trial court.

7. Hence, Application is disposed of by passing the following order :

i) The Trial Court is directed to implement the directions given in the Judgment delivered in Sessions Case No.218 of 2001 by handing over the property as directed by the operative part of the judgment to the applicant.

ii) Before receiving the property, the Applicant will furnish adequate security to the satisfaction of the trial Court for the cash amount. The Applicant will also furnish usual bond recording an undertaking to maintain the jewellery/articles till the disposal of the Appeals and to produce the same before the court in case the direction to that effect is issued.

iii) Before handing over the Articles/jewellery to the Applicant, the same shall be properly photographed at the cost of the Applicant in presence of an Officer of the trial Court. The photographs shall be signed by the Applicant and the said Officer and the same shall be

retained by the Trial Court on its record.

iv) Application is disposed of in above terms.

JUDGE